

Module	SUPERANNUATION
Jurisdictions	CTH, NSW, VIC, SA, TAS, WA, NT, QLD, ACT
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Module Scope

Is your organisation a registrable superannuation entity?

Does your organisation currently hold or intend to acquire an Australian Financial Services Licence (AFSL) or RSE licence authorising the provision of superannuation products?

Does your organisation know and understand the requirements and obligations imposed on a registrable superannuation entity?

Does your organisation have systems and processes in place to manage and monitor compliance with its obligations?

Module Application

The SUPERANNUATION module informs the trustees of a superannuation entity in Australia who want to ensure their understanding and compliance with obligations in relation to the provision of superannuation products and financial services to clients and consumers.

The SUPERANNUATION module starts by covering the process by which an entity becomes eligible to provide superannuation products and services. This process includes applications to the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC) to become a Registrable Superannuation Entity (RSE) with the specific criteria for the applications provided in the module.

Following registration there are extensive general obligations on RSE's which are covered in the module in the areas of;

- › Maintaining good governance;
- › Maintaining fitness and propriety;
- › Managing conflicts of duty and interest;
- › Maintaining good investment governance;
- › Maintaining a risk management framework;
- › Managing risk in relation to business continuity and information security;
- › Maintaining financial resources to address operational risks;
- › Managing insurance as it relates to beneficiaries;
- › Accounting and auditing;
- › Governing rules and covenants;
- › Benefit protection standards;
- › Payment standards;
- › Outsourcing;
- › Margining and risk management for non-centrally cleared derivatives;
- › Appointment and general duties of trustees of superannuation entities;
- › Obtaining authority to offer a “mysuper” product;
- › Authority to operate an eligible rollover fund;
- › Managing contributions;
- › Rollover and transfer of benefits;
- › Dealing with lost and unclaimed super;
- › Amalgamation of funds;
- › Taxation;
- › Whistle blower protections;
- › Winding up;
- › Fees and charges;
- › Reporting obligations;
- › Disclosure obligations;
- › Complaints management;
- › Investigation, monitoring and enforcement;
- › Government co – contributions;
- › Small superannuation accounts;
- › Life insurance products;
- › Family law – agreements and orders;
- › Calculation and payment of ASIC supervisory cost recovery levy.

There are various types of superannuation funds in Australia, and each is subject to a complex mix of legislative requirements and regulatory oversight, depending on the type of fund. The module covers the specific obligations of these different types of superannuation funds and providers;

Regulated versus non-regulated — a regulated fund is a fund whereby the trustees have elected that the fund be regulated under the national superannuation legislation, and which will therefore be subject to concessional tax treatment;

Employer-sponsored versus non-employer-sponsored — an employer-sponsored fund is one whereby the employer of the members contributes to the fund under an agreement with the fund trustee;

Private versus public sector — such classification will depend on whether the fund is sponsored by a private or public sector entity/authority;

Allocated versus defined benefit — in an allocated fund, contributions are credited to individual members, and most of the amount in the fund is credited to members in fixed proportions. In a defined benefit fund, employer contributions are not apportioned among individual members, and a pre-determined benefit amount is payable to members;

Public offer superannuation funds — at a high level, a public offer superannuation fund is defined in opposition to an employer-sponsored fund and is one that is not conducted only for employees of a particular employer.

Commonwealth legislation provides the obligation framework for superannuation. The legislation basis is covered in the module and includes;

The *Superannuation Industry (Supervision) Act 1993* (Cth) (SIS Act), which makes provision for the supervision of particular entities engaged in the industry, and contains licensing and conduct obligations for trustees of registrable superannuation entities (RSEs);

The *Corporations Act 2001* (Cth) (CA), which regulates the provision of financial products and services, and contains a licensing regime for persons conducting a financial services business;

The *Retirement Savings Accounts Act 1997* (Cth), which regulates providers of retirement savings accounts, which are a particular type of superannuation product taking the form of an account as opposed to a trust;

The *Income Tax Assessment Act 1997* (Cth) which is the foundation act for the tax benefits available to regulated superannuation funds;

Responsibility for the administration of superannuation is divided across three separate regulators. The module covers this regulation. The regulators are;

- The Australian Prudential Regulation Authority (APRA);
- The Australian Securities and Investments Commission (ASIC);
- The Australian Taxation Office (ATO).

The trustee or trustees of a superannuation entity are obligated to provide a robust compliance framework to ensure they comply with their regulatory obligations. The framework is to include systems for ensuring that trustees;

- Are appropriately licensed and appointed;
- Maintain good governance, fitness and propriety, and procedures for the management of conflicts of interest;
- Maintain the required financial resources;
- Comply with applicable operating standards as well as payment and benefit protection standards;
- Obtain authority to offer products including a “MySuper” product or operate an eligible rollover fund, if applicable;
- Comply with reporting and disclosure obligations;

- Maintain the required accounting and other records, and comply with auditing requirements;
- Have an adequate risk management and breach reporting framework in place;
- Regularly monitor compliance.

The SUPERANNUATION module also covers required notifications to APRA and ASIC and potential consequences resulting from a breach or potential breach of obligations. The potential consequences include;

- Suspending the licence;
- Cancelling the licence;
- Imposing additional licence conditions.
- Other consequences can also apply depending on the level or seriousness of the breach.

The SUPERANNUATION module covers the obligations of trustees and providers of superannuation in Australia. It does not cover the obligations of employers regarding the payment of superannuation on behalf of their employees.

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